

### **REMARKS**

Applicants thank the Examiner for total consideration given the present application. Claims 1-6 were pending prior to the Office Action. Claim 5 has been canceled and claim 7 has been added through this Reply. Therefore, claims 1-4, 6, and 7 are pending. Claims 1, 3, 6, and 7 are independent. Claim 3 has been amended through this Reply. Applicants respectfully request reconsideration of the rejected claims in light of the amendment and remarks presented herein, and earnestly seek timely allowance of all pending claims.

### **ALLOWABLE SUBJECT MATTER**

Applicants appreciate that claim 5 is allowed. Claim 5 has been cancelled through this Reply. However, note that claim 6 and new claim 7 corresponds to the subject matter recited in claim 5.

### **CLAIM OBJECTIONS**

Claim 3 stands objected for minor informalities. This claim has been amended to address this issue.

Claim 6 stands objected as allegedly being substantial duplicate of claim 5. Claim 5 has been cancelled through this Reply rendering the objection as moot.

### **35 U.S.C. § 112, 2ND PARAGRAPH REJECTION**

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. More specifically, the Examiner alleges that there is insufficient antecedent basis for the limitation "the authenticating device" recited in page 22, line 10 of the Specification. Although Applicants do not necessarily agree with the Examiner that claim 3 is indefinite, this claim has been amended through this Reply in order to expedite prosecution.

Accordingly, Applicants respectfully request that the Section 112, second paragraph rejection of claim 3 be withdrawn.

35 U.S.C. § 101 REJECTION

Claim 1-4 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. More specifically, the Examiner alleges that since the instant Specification recites that the “units” may include software modules, the claimed “authenticating device” and “authenticated device” are drawn to functional descriptive material and does not fall into at least one of the four statutory classes defined by 35 U.S.C. § 101. (*See page 3, section 6 of the Office Action.*)

First, it is respectfully submitted that the Examiner’s characterization of the claimed invention as a “device” drawn to “functional descriptive material” is totally illogical. The Examiner acknowledges that the claimed invention is directed to a “device”. A “device” by its definition is a “physical object” or a “machine”, which are statutory under 35 U.S.C. § 101. Such device simply cannot be drawn to a “functional descriptive material” as alleged by the Examiner.

Second, independent claim 1 is directed to an authenticating “device” which comprises “an authenticating processing unit” and “an update key generating unit” wherein each of these units performs specific functionality. Independent claim 3 is directed to an authenticated “device” which comprises “a memory unit”; “an authenticating processing unit”; “a transmitting unit” and “a receiving unit” wherein each of these units performs specific functionality.

All of the above-identified units are “physical objects”. Further, even if the “units” may include software modules, these software modules must be implemented into hardware, such as the authenticating device (claim 1) or the authenticated device (claim 2), to achieve functionality.

Third, it is respectfully submitted that the Examiner’s reliance on *In re Nuijten* to reject claims 1-4 is totally erroneous. Simply put, *In re Nuijten* does not apply to claims 1-4 at all. The *Nuijten* court found that a propagated signal is not patentable even if tied to a transitory form. Indeed, the *Nuijten* court acknowledged the definition of “machine” as “a concrete thing, consisting of parts, or of certain devices and combination of devices”. Under this definition the

court found that a propagated signal is not a machine. Contrary to *In re Nuijten*, claims 1-4 do not recite any “propagated signal”. On the other hand, claims 1-4 are directed to a “device” which the Nuijten court acknowledged as a “machine”.

Therefore, for at least these reasons, it is respectfully submitted that claims 1-4 are statutory under 35 U.S.C. § 101. If the Examiner continues to maintain this rejection, the Examiner is requested to provide detail explanations as to why the claims are non-statutory. A mere statement that “the claimed authenticating device and the authenticated device are drawn to functional descriptive material” is not sufficient to allege that the claims are non-statutory.

Accordingly, it is respectfully requested that this rejection be withdrawn.

35 U.S.C. § 102 REJECTION – Yeh

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Yeh et al. (U.S. Patent Publication No. 2005/0120203)[hereinafter “Yeh”]. Applicants respectfully traverse this rejection.

For a Section 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See M.P.E.P. 2131; M.P.E.P. 706.02*. Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Yeh fails to teach or suggest each and every claimed element. For example, independent claim 1 recites, *inter alia*, “an update key generating unit . . . to generate a new authentication key for updating an authentication key to be used in the authentication process by the authentication processing unit when the authenticated device holds the authentication key but the authentication process with the authenticated device by the authentication processing unit fails.” *Emphasis added*.

It is respectfully submitted that Yeh fails to teach or suggest the above-identified claim feature as recited in claim 1.

Yeh is directed to a conventional method and system for automatic rekeying upon detection by a client 20 that server authentication has failed. More specifically, the automatic rekeying may include requesting an updated key from a server 10. This request may include an identification of a current public key of the client and the server may access a repository of previous keys to sign the updated public key sent to the client with a private key corresponding to the current public key of the client. (See Abstract.)

Yeh is distinguished from the claimed invention in that nowhere does Yeh teach or suggest that when the authenticated device (20) holds the authentication key but the authentication process with the authenticated device 20 by the authentication processing unit fails, the updating key unit generates a new authentication key for updating an authentication key to be used in the authentication process by the authentication processing unit. Indeed, Yeh does not require any generation of new keys if the client 20 holds the authentication key. Yeh merely suggests that when the client 20 does not hold an authentication key, the server 10 accesses a repository 12 of previous keys to sign the updated public key sent to the client 20 with a private key corresponding to the current public key of the client.

Thus, based on the foregoing, it is respectfully submitted that Yeh does not teach or suggest an update key generating unit which generates a new authentication key for updating an authentication key to be used in the authentication process by the authentication processing unit when the authenticated device holds the authentication key but the authentication process with the authenticated device by the authentication processing unit fails.

Amended claim 3 also recites a transmitting unit that transmits a prescribed algorithm identifier and a prescribed encryption key identifier stored by a memory unit, to an authenticating device when the authenticated device holds the authentication key but the authentication process with the authenticating device by the authentication processing unit fails. At least for the reasons stated above with respect to claim 1, it is respectfully submitted that Yeh cannot be relied upon to teach or suggest the above-identified claim feature of independent claim 3.

Therefore, for at least these reasons, independent claims 1 and 3 are distinguishable from Yeh. Accordingly, Applicant respectfully requests that the rejection of claims 1 and 3, based on Yeh, be withdrawn.

35 U.S.C. § 103 REJECTION – Yeh, Edgett

Claims 2 and 4 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yeh in view of Edgett et al. (U.S. Patent Publication No. 2004/0034771)[hereinafter "Edgett"]. Claim 2 depends from claim 1 and claim 4 depends from claim 3. Thus, for at least the reasons stated with respect to claims 1 and 3, claims 2 and 4 are also distinguishable from Yeh. Edgett has not been, and indeed cannot be relied upon to fulfill the deficiency of Yeh.

Accordingly, Applicants respectfully request that the rejection of claims 1 and 4, based on Yeh and Edgett, be withdrawn.

NEW CLAIM

New independent claim 7 is directed to a computer readable storage medium having stored thereon computer executable program for performing an authentication process, the computer program when executed causes a processor to execute the steps as recited in cancelled allowed claim 5. Therefore, it is respectfully submitted that claim 7 is allowable. Further, since claim 6 recites similar method steps as previously recited in canceled allowed claim 5, it is respectfully submitted that claim 6 is also allowable.

CONCLUSION

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ali M. Imam Reg. No. 58,755 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

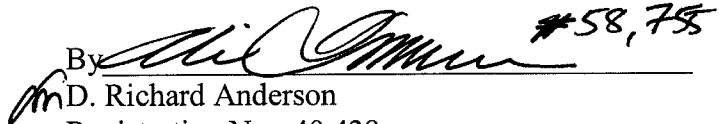
Application No. 10/584,193  
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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